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SUBJECT: SPECTRUM MANAGEMENT POLICIES

REF: STATE 22577

11. Summary. This cable outlines responses by GRP National Telecom Commission to reftel questionnaire on spectrum management. End summary.

POST RESPONSE TO RADIO FREQUENCY SPECTRUM SURVEY

1A. Which organizations are involved in spectrum management in your country? To whom are they responsible - executive branch, legislative branch, military - or are they autonomous?

The National Telecommunications Commission (NTC) is responsible for spectrum management in the RP. The NTC is administratively attached to the Department of Transportation and Communication (DOTC), but it takes policy direction from the Commission on Information and Communication Technology (CICT), which is under the Office of the President. There is a bill that would create a separate Department of Information and Communications Technology (ICT), but Congressional hearings have not yet been held to move it forward.

1B. Assignment Process: Please describe the mechanism(s) your country uses to assign spectrum (for example, auctions, lotteries, comparative hearings). To what services and / or bands are such mechanisms applied?

The NTC manages a formal application process for frequency allocation. According to RP law (Republic Act 7925 passed in March 1995), there are two basic principles used to determine allocation. First, allocations are to be awarded to the best-qualified applicants. Second, an open tender bidding process is required for cases in which demand for specific frequencies exceeds availability. Applicant qualifications are evaluated according to a pre-determined set of criteria, which considers possession of a legislative franchise, track record, existing infrastructure, financial stability and the absence of outstanding financial obligations to the NTC. This allocation process applies to all services and bands.

A recent bidding process for third generation (3G) allocations demonstrates this process. The NTC determined that five International Telecommunications Union (ITU) identified frequency bands were available for allocation. Nine companies applied for qualification as 3G service providers. However only four applicants were deemed to be qualified based on a set of criteria published on the NTC's website www.ntc.gov.ph (ref Memorandum Circular 07-08-2005), and therefore the allocations were awarded to those four companies with the first option to choose a frequency band granted to the most qualified candidate. The NTC disqualified one applicant because of an outstanding debt to the NTC. If more than five applicants had established satisfactory qualifications then an open tender bidding process would have ensued.

1C. Licensing Regime: Please describe your spectrum-licensing regime. Are licenses awarded for the provision of a specific service, or a specified technology standard? Are the licenses subject to renewal?

Licenses are awarded based on the specific service requested. The GRP maintains a "technology-neutral" position with regard to licensing; companies may use any chosen technology. A license is valid for 3 years and can be renewed for continued use. The renewal process is less rigorous than the initial assignment process. There is a registration license fee that ranges from \$8 - \$18 per year.

1D. Licensee Privileges: What flexibility do licensees have (e.g., secondary markets) to transfer their spectrum rights to other parties? May licensees aggregate licenses or subdivide them? May licensees make all or part of their spectrum available to other entities based on geography or time? May licensees accept payment in exchange for spectrum access?

Transfers:

It is possible to transfer spectrum rights to other parties.

However any such transfer requires NTC approval. The transferee is required to demonstrate qualifications which meet the NTC's allocation criteria.

Aggregation:

Licensees may aggregate licenses and several telecom companies have done so following mergers. The Commission must approve all requests for aggregation. (Note: RP law does not include anti-trust legislation. There is no mechanism to address monopolistic threats, which may arise from aggregation. End Note.)

Sub-division:

Licensees may sub-divide licenses. However the beneficiary of any such sub-division is required to demonstrate qualifications which meet the NTC's allocation criteria. Licensees may choose to make all or part of the spectrum available to other entities through transfer or subdivision.

Compensation for 3rd Party Access Arrangements:

Licensees cannot accept payment in exchange for spectrum access. The GRP considers the radio frequency spectrum to be a public resource rather than a commodity.

Other Considerations: Re-Allocation of Spectrum Assignments

The GRP reserves the right to re-allocate existing spectrum assignments as necessary. A public hearing is held prior to re-allocation. New assignees are expected to reach an agreement with legacy licensees or "tenants" on the channel with compensation at the expense of the new entrant. For example, negotiations may lead to an agreement to carry the tenant on the assignee's network, a buy-out of the current tenant or compensation for infrastructure investments. Disputes may be raised with the NTC for consideration. (Comment: There seems to be little structure around this negotiation. The government does not get involved unless the affected parties cannot reach an agreement privately. This uncertainty may hinder efficient use of the spectrum. End Comment.)

E. Spectrum Fees: What type of fees are imposed on spectrum users? How are fees calculated? Which, if any, spectrum users are exempt from fees?

Edgardo Cabarios, Director of the NTC's Common Carrier Department indicated that the RP was the first country to assign spectrum user fees to all services and all users in 1996. Spectrum fees had been an important source of revenue for the DOTC, contributing about 500 million pesos to the National coffers in 2005. The NTC expects to generate about 900 million pesos in spectrum user fees in 2006.

According to RP law, "spectrum user fees shall be applied uniformly and without discrimination to all users under the same classification / category. Services which cater to emergency situations as may be determined by government, national disasters, public safety and national security shall be exempt from the payment of spectrum user fees." A committee appointed by the Commission makes recommendations on the fee schedule. The schedule is then discussed at a public hearing before the Commission approves the final schedule of spectrum user fees. Maritime, military and broadcasting groups are exempt from fees. Maritime and military groups have compelling safety and security needs with regards to the spectrum and the broadcasting groups are exempted based on freedom of the press.

Cabarios described three criteria which are considered when determining fees: 1) "sale-ability" of the frequency, 2) bandwidth requirements and 3) geographic considerations - fees are decreased for service delivery in rural areas to attract companies to underserved markets.

In a recent allocation for 3G-radio bandwidth, spectrum fees were tied to the number of subscribers. A base price of \$1.2M (for 10 MHz) was established to accommodate up to 4 million users. An additional spectrum user fee of \$26k will be assessed for each additional group of 100,000 users over the 4 million-user threshold.

F. Treatment of Government versus Commercial Users: Are government or other non-commercial users subject to the same or different rules as commercial users with respect to questions 1-5 above? If yes, please describe.

The same process rules are applied to both Government and Commercial Users.

G. Other Incentives: Please describe what other means (not already identified) are used to encourage more efficient use of spectrum through market-based incentives or other mechanisms.

In 2000, the GRP implemented an initiative to improve spectrum efficiency by assigning fees according to bandwidth requirements. Fees were previously levied according to the

number of mobile stations maintained by the licensee. Companies have the option to use and pay for a wider bandwidth in order to reduce the need to build and install new stations. (Note: If the bandwidth were thin, there would be a need to invest in more stations to widen coverage for a particular service. End Note.) Also, the GRP monitors the use of spectrum allocations. The GRP reserves the right to recall and re-allocate unused channels.

H. Government Spectrum: If not already addressed above, do the provisions identified above (market-based assignment mechanisms, secondary markets, fees) apply to the management of spectrum used by government agencies or other non-profit entities? Please describe and identify any lessons learned.

Addressed above.

I. In -Country Contacts and Studies: Please provide several in-country contacts that are willing to discuss these issued in more detail with us. For each of these contacts, supply his or her name, title, organization, postal address, email address, telephone and fax numbers. Also, please provide all publicly available spectrum studies of market-based economic mechanisms (such as incentives).

Contacts:

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